HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 1235 OF 2006

Between:

Sunkari Prasad

..... Appellant

AND

The Revenue Divisional Officer,
Porumamilla Division, Kadapa District & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Smt. N. Shoba

Dated: 27.11.2006

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 30.10.2006 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant for quashing notice-cum-order dated 24.10.2006 issued by Mandal Revenue Officer, Porumamilla Mandal, Kadapa District (respondent No.2) under Section 3 of the Andhra Pradesh Land Encroachment Act, 1905 (for short 'the Act').

The appellant's father is said to have purchased land measuring Ac.1.00 comprised in Survey No.21/1, Markapuram Village, Porumamilla Mandal, Kadapa District vide registered sale deed dated 17-11-1970. After the death of his father in September 2005, the appellant claims to have become its owner. On 13.10.2006, respondent No.2 issued notice to the appellant under Section 7 of the Act requiring him to show cause as to why he may not be evicted from the encroached land measuring Ac.0.14 guntas, on which he had constructed a compound wall across the pathway meant for carriage of bullock carts. The appellant is said to have sent a reply on 20.10.2006 under certificate of posting. He claims to have sent a copy of the explanation by registered post. Thereafter, respondent No.2 issued notice-cum-order dated 24.10.2006 for eviction of the appellant. He filed writ petition under Article 226 of the Constitution of India for quashing notice-cum-order dated 24.10.2006 by contending that the same is vitiated due to violation of the rules of natural justice.

The learned Single Judge dismissed the writ petition by observing that the petitioner has an effective alternative remedy by

way of appeal under Section 10 of the Act.

We have heard Smt. N. Shoba, learned counsel for the appellant. Although the translation of the notice-cum-order impugned in the writ petition filed in the record of the writ appeal is not correct, we do not propose to non-suit the appellant on that ground. Smt.N. Shoba tried to persuade us to entertain the cause of the appellant by arguing that the impugned notice-cum-order is vitiated due to violation of the rules of natural justice. She further argued that the action taken by respondent No.2 is liable to be nullified because the reply/explanation sent by the appellant in response to notice dated 13.10.2006 has not been considered and no reason has been assigned for ordering his eviction from the land, which was purchased by his father by registered sale deed.

In our opinion, there is no merit in the arguments of the learned counsel. It is trite to say that that in exercise of power under Article 226 of the Constitution of India, the High Court will not entertain a writ petition if an effective alternative remedy is available to the petitioner. There are some exceptions to this general rule including the one that the High Court may entertain a writ petition if the action complained of is vitiated due to violation of the principles of natural justice, but, in our considered view, the appellant's case does not fall within the ambit of the said exception. A reading of notice dated 13.10.2006 and the impugned notice-cum- order dated 24.10.2006 shows that respondent No.2 had initiated action under Section 7 on the premise that the appellant has encroached on Ac.0.14 guntas of land and constructed the compound wall. Whether or not the construction

made by the appellant is beyond the area of Ac.1.00 land, which was purchased by his father in 1970, is the question which can appropriately be decided by the appellate authority constituted under the Act. The question whether the respondent has acted in violation of the rules of natural justice can also be gone into and appropriately adjudicated in the appeal, which may be filed by the appellant. Therefore, in the absence of any extraordinary reason, we do not find any justification for entertaining the writ petition despite the fact that he has got an effective alternative remedy under Section 10 of the Act.

In the result, the appeal is dismissed. However, liberty is given to the appellant to avail the alternative remedy of appeal. He is granted two weeks' time to file appeal against the impugned notice-cum-order. If he does so, the Appellate Authority shall entertain and decide the same on merits.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.2569 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

27.11.2006

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